

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

FARAHNAZ AMIRKHANI,

Plaintiff,

v.

07-MC-0405-A

Department of Homeland Security;
The United States Citizenship and
Immigration Services; and the
Federal Bureau of Investigation,

Defendants.

**NOTICE OF MOTION FOR AN
ENLARGEMENT OF TIME TO RESPOND**

PLEASE TAKE NOTICE, the defendants, by counsel, Terrance P. Flynn, United States Attorney in and for the Western District of New York, GAIL Y. MITCHELL, Assistant United States Attorney, of counsel, hereby move this Court, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, for an Order granting defendants an enlargement of time to and including November 13, 2007, to answer or otherwise respond to the complaint filed in this proceeding on the grounds set forth in the accompanying

Affidavit of GAIL Y. MITCHELL, and for such other further relief as the Court may deem just and proper.

DATED: Buffalo, New York, September 6, 2007.

Respectfully submitted,

TERRANCE P. FLYNN
United States Attorney

BY: S/Gail Y. Mitchell
GAIL Y. MITCHELL
Assistant U.S. Attorney
United States Attorney's Office
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW

FARAHNAZ AMIRKHANI,

Plaintiff,

v.

07-MC-0405-A

DEPARTMENT OF HOMELAND SECURITY;
THE UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, AND THE
FEDERAL BUREAU OF INVESTIGATION,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
CITY OF BUFFALO)

GAIL Y. MITCHELL, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the Western District of New York. I have been assigned to represent the defendants in this matter and am fully familiar with the pleadings and proceedings had herein.

2. I make this affidavit in support of defendants' motion for an enlargement of time within which to respond to the complaint filed in this case.

3. Defendants request an enlargement of time up to and including November 13, 2007, to file an answer or motion to dismiss or otherwise respond to the complaint filed in this proceeding.

BACKGROUND

4. Plaintiff Farahnaz Amirkhani ("plaintiff"), an alien, seeks relief pursuant to a petition for writ of mandamus. She alleges in her complaint that adjudication of her application for adjustment of status by the United States Citizenship and Immigration Services ("USCIS") has been unreasonably delayed. (Complaint, Dkt. #1, ¶¶ 10, 15).

5. Specifically, plaintiff alleges that in February 2004 she petitioned USCIS "for classification as the wife of a United States citizen and for status of permanent residence", and that her application has not yet been finalized. (Complaint, ¶¶ 7, 9).

6. Pursuant to 108 Stat. 1725, 1766 (1994); P.L 103-317, § 506(d), "the Immigration and Naturalization Service¹ shall conduct full fingerprint identification checks through the Federal Bureau of Investigation for all individuals over 16 years of age adjusting immigration status in the United States pursuant to this section."

7. The records maintained in the Federal Bureau of Investigation ("FBI") name check process consist of administrative, applicant, criminal, personnel and other files compiled by law enforcement.

8. Following receipt of the complaint in this case, representatives of my office have been in contact with representatives from counsel's office for both USCIS and the FBI to ascertain the status of this matter.

9. Terri Zall, Associate General Counsel, FBI, has confirmed that on August 7, 2007, USCIS requested that the

¹ As of March 1, 2003, the Immigration and Naturalization Service ("INS") has been abolished and its functions transferred to the Department of Homeland Security ("DHS") pursuant to the Homeland Security Act of 2002, 116 Stat. 2135; Pub.L. 107-296, codified at 6 U.S.C. § 101 et seq. The functions of DHS that are relevant here are handled by USCIS.

Federal Bureau of Investigation provide expedited processing of plaintiff's name check.

10. Based on past history of cases such as this in my office, it is anticipated that a determination on plaintiff's application will likely be made by USCIS by November 13, 2007.

11. The Government's answer to the complaint is due to be filed on September 11, 2007.

12. Because we anticipate a determination on plaintiff's application for adjustment of status within the next 60 days, defendants seek an extension of time until November 13, 2007, within which to answer or otherwise move in response to the complaint.

13. This motion is made before the expiration of defendants' time to answer or otherwise respond to the petition.

14. I have contacted plaintiff's counsel, William H. Oltarsh, Esq., and he has no objection to this request for an enlargement of time.

15. Defendants have not previously requested an enlargement of time in this case.

WHEREFORE, it is respectfully requested that the Court grant defendants' request for an enlargement of time to and including November 13, 2007, in which to answer or otherwise respond to the petition.

DATED: Buffalo, New York, September 6, 2007.

Respectfully submitted,

TERRANCE P. FLYNN
United States Attorney

BY: S/Gail Y. Mitchell
GAIL Y. MITCHELL
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Gail.Mitchell@usdoj.gov

Subscribed and sworn to before
me this 6th day of September, 2007.

S/Marquitta R. Whitehead
MARQUITTA R. WHITEHEAD
Commissioner of Deeds
In and For The City of Buffalo
My Commission Expires Dec. 31, 2009.

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THE DEPARTMENT OF HOMELAND SECURITY;
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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2007, I electronically filed the foregoing **NOTICE OF MOTION AND AFFIDAVIT OF GAIL Y. MITCHELL DATED SEPTEMBER 6, 2007**, with the Clerk of the District Court using its CM/ECF system.

1. William H. Oltarsh, Esq.
Counsel for Plaintiff

S/Joan M. Arki
JOAN M. ARKI
Paralegal Specialist